



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**OPENING THE MEXICAN DOOR:  
CONTINENTAL DEFENSE COOPERATION**

by

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September 2005

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**OPENING THE MEXICAN DOOR:  
CONTINENTAL DEFENSE COOPERATION**

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## **ABSTRACT**

Today our security environment has changed dramatically and institutions which defend our continent against common threats must adapt to remain viable. Otherwise, the safety, security, and economic prosperity of North America will be in jeopardy. The World Trade Center attack demonstrated that asymmetric threats can approach the U.S. from any direction. This attack also reinforced the fact that natural and technological disasters can have international consequences and continental impact. Given this statement, a noticeable missing element in our defense relationship with Canada and Mexico is the absence of a formal policy for bilateral military cooperation in support of civil authorities. Also missing is a Mexican defense coordinating presence at NORAD and USNORTHCOM. Southern aerospace, maritime, and land approaches to the U.S. are just as important as the northern approaches with respect to an attack or consequence management operations. The absence of common border area military interaction and cooperation limits options and capabilities that can be leveraged against binational disasters and events of continental significance.

This thesis examines shared U.S.-Mexican security challenges and argues that a bilateral transnational emergency management framework, which incorporates a civil-military partnership, can serve as the cornerstone upon which North American defense can be built. To achieve this outcome, the existing Pacific Northwest emergency management cross-border agreements and the role of the National Guard are examined as models for establishing a regionally based emergency management structure.

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## I. INTRODUCTION

We all are working to consolidate the democratic progress in our region; to set military priorities in our democratic societies; to identify and better understand the new threats of the 21st century; and to transform our military capabilities to meet those emerging threats, individually and collectively.<sup>1</sup>

Donald Rumsfeld  
U.S. Secretary of Defense  
Meeting of Western Hemisphere Defense Ministers

On April 30, 2002, President Bush signed a new Department of Defense (DOD) Unified Command Plan (UCP), which went into effect on October 1, 2002.<sup>2</sup> Among other things, the UCP established the United States Northern Command (USNORTHCOM) to provide command and control of the DOD homeland defense efforts and to coordinate military support to civil authorities.<sup>3</sup> Part of this defense effort is to coordinate and cultivate defense and security relationships with countries in its designated area of responsibility (AOR) which includes Canada and Mexico. Fortunately, the United States (U.S.) enjoys a strong and sophisticated defense partnership with its northern neighbor Canada in organizations such as the North Atlantic Treaty Organization (NATO) and the North American Aerospace Defense Command (NORAD). Relations with Mexico, on the other hand, are not as comprehensive and expanded defense cooperation is lagging due to historic and political differences. With both Canada and Mexico, policy and supporting structures do not formally exist for efficient and seamless military-to-military cooperation in support of civil authorities. Closing this gap can serve as a platform for expanding U.S.-Mexican military cooperation and be the first step toward an integrated North American defense.

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<sup>1</sup> Donald Rumsfeld, Meeting of Western Hemisphere Defense Ministers, November 19, 2002. Office of International Information Programs, U.S. Department of State.

<sup>2</sup> Scott Shepherd and Steve Bowman, "Homeland Security: Establishment and Implementation of the United States Northern Command," Congressional Research Service Report for Congress (CRS Order Code RS21322), 1. Available at <http://www.fas.org/sgp/crs/homesecc/RS21322.pdf> [Accessed April 2005].

<sup>3</sup> Ibid.

## **A. PURPOSE**

Today our security environment has changed dramatically and institutions which defend our continent against common threats must adapt to remain viable. If they do not adapt, the safety, security, and economic prosperity of North America will be in jeopardy. Recent terrorist activity against the United States, including the World Trade Center attacks and attempted attacks related to the Millennium plots demonstrated that asymmetric threats can approach U.S. borders from any direction. They also demonstrated that the armed forces, particularly the National Guard can provide civil authorities immediate support and capability. This attack also reinforced the fact that natural and technological disasters can have binational consequences and continental impact. Given this statement, a noticeable missing element in our defense relationship with Canada and Mexico is the absence of a formal policy for bilateral military cooperation in support of civil authorities. Also missing is a Mexican defense coordinating presence at NORAD and USNORTHCOM.

Southern aerospace, maritime, and land approaches to the U.S. are just as important as the northern approaches with respect to an attack or consequence management operations. The absence of border area military interaction and cooperation limits our options and capabilities that can be leveraged against binational disasters and events of continental significance. This thesis examines shared U.S.-Mexican security challenges and argues that a bilateral transnational emergency management framework, which incorporates a civil-military partnership, can serve as the cornerstone upon which North American defense can be built. To achieve this outcome, the existing Pacific Northwest emergency management cross-border agreements and the role of the National Guard are examined as models for establishing a regionally based emergency management structure.

## **B. BACKGROUND**

Economic trade between the United States, Canada, and Mexico has exploded over the last decade improving the welfare of each nation. Yet today, we do not have a mature security relationship that can deter or prevent

asymmetric aggression and protect our interdependency. Security cooperation programs in place prior to 9/11 failed to adequately address the reality of the evolving security environment. In retrospect, it is clear U.S. unilateral action following the attacks on 9/11 bolstered the aims of al-Qaeda by creating additional economic havoc. Closed borders and grounded air traffic affected the entire economy of North America. Today, borders continue to remain vulnerable despite well-intentioned efforts to control them.

The significance of continental security cooperation cannot be understated. Canada and Mexico are the United States' largest trading partners, and vice versa. The Institute for Research on Public Policy points out in its "Roadmap for a Treaty of North America" that one of the foundations of any community must be security, writ large.<sup>4</sup> Under the North American Free Trade Agreement (NAFTA), the Canadian, Mexican, and U.S. trade relationship is predominately free of tariffs, which resulted in trade of over \$625 billion in 2003.<sup>5</sup> U.S. energy security is dependent on Canada as its largest supplier of foreign energy and we are joined together on a common electricity grid. Shawn Smallman points out in "Canada's New Role in North American Energy Security" that the U.S. imports more oil from Canada than it does from any single source in the Middle East. Similarly, Mexico supplies the U.S. with vast amounts of energy and other forms of critical infrastructure. Security cooperation with Mexico and Canada takes on a new level of importance when U.S. national security is threatened by attacks on foreign infrastructure.

Even though the continent wide economic shock waves generated by 9/11 have led to incremental changes along the borders, formalized military-to-military national protocols, procedures, and mechanisms do not exist to effectively deal with binational issues affecting our nations if an attack or disaster occurs. Excluding NORAD's air defense mission and NATO, only ad hoc relationships

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<sup>4</sup> Thomas Courchene, Donald Savole, and Daniel Schwanen, "Deeper, Broader: A Roadmap for a Treaty of North America," *The Art of State* Vol. 2, No. 4 (Montreal: The Institute for Research on Public Policy, 2004), 13.

<sup>5</sup> U.S. Embassy in Mexico, *2003 Trade*, Available at <http://www.usembassy-mexico.gov/eataglance1.htm> [Accessed November 2004].

exist between the U.S. and Canadian military. Further, the Department of Homeland Security (DHS) and its Canadian and Mexican equivalents have limited relationships that address binational homeland security and emergency response issues. Similarly, the Center for Strategic and International Studies recently pointed out that no comprehensive strategies exist between the U.S. and Mexico for managing cross-border catastrophic events.<sup>6</sup> Military cooperation with Mexico is almost non-existent outside of foreign military sales and training despite USNORTHCOM's efforts to develop cross-border cooperation. This is problematic because homeland security and defense responsibilities overlap and a binational catastrophic event will require multinational interagency coordination that may demand the resources and capability of the military. Richard Haass, Director of Policy Planning Staff at the State Department, gave an address in April 2002 in which he said, "In the twenty-first century, the principal aim of American foreign policy is to integrate other countries and organizations into arrangements that will sustain a world consistent with U.S. interests and values, and thereby promote peace, prosperity, and justice as widely as possible."<sup>7</sup> In order for the U.S. to promote these ideals, it must secure itself at home and demonstrate integration leadership.

In a research policy paper published at the Naval War College, Bruce Grissom points out in "NORTHCOM Revisited: Trinational Prospects for Continental Security," that all three countries have an interest in a multinational security organization and suggests that USNORTHCOM should be structured to lead both military and civilian agencies in the security realm.<sup>8</sup> While this is a possible solution to continental security, what is not addressed is how to create a political environment in which this outcome is possible. This is already

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<sup>6</sup> United States - Mexico Binational Council, *US-Mexico Border Security and the Evolving Security Relationship: Recommendations for Policymakers* (Washington, D.C.: Center for Strategic and International Studies, April 2004), 21.

<sup>7</sup> Richard Haass, *The 2002 Arthur Ross Lecture, Remarks to Foreign Policy Association, New York*, April 2002. Available at <http://www.state.gov/s/p/rem/9632pf.htm> [Accessed December 2004].

<sup>8</sup> Bruce Grissom, *NORTHCOM Revisited: Tri-National Prospects for Continental Security*, February 2004. Available at <http://library.nps.navy.mil/homesecc/docs/dtic/ADA422801.pdf> [Accessed November 2004].

problematic within the context of the U.S. civil-military relations since civilian agencies have traditionally taken the lead in responding to domestic contingencies, yet attempting to build a cooperative relationship with Mexico may be even more complicated. Based on Mexican interactions to date, trilateral security and military cooperation will take decades to evolve without a practical engagement strategy. Solutions proposed in a unilateral vacuum, no matter how good they are, will likely be resisted.

Assessing the security cooperation programs that currently exist against perceived threats and vulnerabilities can serve as a foundation for honing existing cooperation programs and future policy efforts to strengthen continental defense and security. Several bodies of work exist examining these topics individually, however, nothing exists that synthesizes comprehensive continental security cooperation activities against vulnerabilities. Consequently, a vulnerability analysis from a continental perspective and a practical engagement strategy at the strategic level has yet to be developed.

In “Canada Alert: Trade and Security in North America the Importance of Big Ideas”, Dwight Mason points out that the evolution of the Canada-U.S. defense relationship since WWII can serve a potential model for the future management of security and trade issues in North America.<sup>9</sup> Mason further suggests that the asymmetry in the [Canada-U.S.] bilateral relationship combined with the diversity of the domestic actors in the U.S. basic policy proposals regarding the future of defense will have to originate in Canada.<sup>10</sup> Unfortunately, Mason’s argument is limited to Canada and is restricted to defense. Expanding this concept in scope by including “security” and projecting an analysis of the Canada-U.S. defense relationship onto a Mexican framework can lead to policy options for developing the U.S.-Mexican relationship. It also points out that given Mexico’s reluctance to engage in the discussion on binational security, the U.S.

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<sup>9</sup> Dwight Mason, “Canada Alert: Trade and Security in North America the Importance of Big Ideas,” July 2004. Available at [http://www.csis.org/americas/pubs/hf\\_v12\\_09.pdf](http://www.csis.org/americas/pubs/hf_v12_09.pdf) [Accessed August 8, 2005].

<sup>10</sup> Ibid.

will have to take the lead, resolve the policy disputes among its domestic actors and develop a coherent strategy for improving its relationship with Mexico on this set of issues.

Homeland defense and security are top priorities in every nation. For over a half-century, the U.S. and Canada have worked together militarily and diplomatically resulting in sustained security and economic prosperity for themselves and hemispheric neighbors. Today however, this relationship must be extended to Mexico to safeguard continental prosperity and a strategy is needed to engage its military.

### **C. CHAPTER OVERVIEW**

Chapter II begins with an examination of why Mexican military cooperation is important to U.S. security and in particular USNORTHCOM. Common threats that both nations share and the evolving security environment as well as the role of the military is discussed. Additionally, the growing importance of bilateral management of binational disasters and the lack of military involvement in binational consequence management planning as well as the growing economic interdependencies between U.S. and Mexico are explored. Lastly, a qualitative analysis regarding the state of cooperation between the U.S. and Mexican military is presented.

An analysis of strategic Canadian-U.S. defense relationships is presented in Chapter III to suggest how similar arrangements can be developed with Mexico. Canada is ideal for this comparison because it enjoys a mature defense relationship with the U.S. Based on this analysis, a U.S.-Mexican defense planning architecture is discussed as a solution that can address the current strategic planning gap that exists. Further, the use of the National Guard as an emergency management state partner is recommended as the first step to establish an operational military relationship with Mexico.

Chapter IV explores permitting state governors the authority to order National Guard forces to assist in cross-border emergency management operations. Provided that military support is allowed and the transnational

emergency management arrangements incorporate bilateral military participation, similar arrangements with Mexico can then be pursued as a politically acceptable demonstrated method for enhanced military cooperation. Finally, chapter V concludes with a summary of recommendations.

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## **II. IMPORTANCE OF U.S.-MEXICAN MILITARY COOPERATION**

The Mexican government is working to achieve coordination with its partners in the United States and Canada and to make this region the most competitive and safest in the world.<sup>11</sup>

- President Vicente Fox

Mexico is the only country that shares the U.S. southern land border. Since our common modern national territory boundaries were determined following the U.S.-Mexican War, our relationship with Mexico has been of interest to military planners, political leaders, and the business community. While a lot can be said about why Mexico should distrust or not cooperate with the U.S., the purpose of this chapter is to emphasize the importance of and need to develop a mature relationship for both nations that is of mutual benefit politically, economically and socially.

### **A. COMMON THREATS**

Mexico and the U.S. share roughly 2,000 miles of land, maritime, and aerospace borders that must be defended against aggression and safeguarded from unlawful activities to ensure national sovereignty and integrity. Given the enormous size of the border, the U.S. alone cannot physically or financially support the defense of all maritime, aerospace, and land approaches adequately. Border areas are entry points for aggression and defeating threats in each of the domains will require efficient and robust military and diplomatic cooperation. For decades the U.S. and Canada have successfully used NORAD to address the strategic aerospace threat. Today NORAD patrols against the more likely hijack scenario and maritime options are now being considered. This defensive partnership and aerospace layer ends at the U.S.-Mexican border and must be extended and expanded to adequately protect U.S. security interests and

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<sup>11</sup> President of the Republic of Mexico Website, *Mexico, United States and Canada Establish Security and Prosperity Partnership of North America*, March 23, 2005. Available at <http://envivo.presidencia.gob.mx/?P=2&Orden=Leer&Art=9202> [Accessed August 8, 2005].

eliminate this open seam. The DOD Strategy for Homeland Defense and Civil Support recognizes this necessity and describes an active layered defense as needed to protect the United States by seamlessly integrating its capabilities in forward regions of the world and in the geographic approaches to U.S. territory.<sup>12</sup>

Both Mexico and the U.S. acknowledge that a traditional strategic threat does not exist so a relationship based on defending against an invading external enemy is out of the question. The days when Mexico and the U.S. cooperated militarily against a common enemy, as they did in World War II, are over. The definition of a strategic threat, however, has evolved over the last decade and transnational problems such as terrorism, drug interdiction, and human smuggling now represent the new strategic enemies that challenge the security of both nations. Historically these problems have been addressed by law enforcement, but as the scope and intensity has escalated over the last decade the military has increasingly played a larger role in supporting civil operations. Consequently, in the U.S. and Mexico today, the military frequently provides support to law enforcement activities. Military aircraft are routinely used as sensor platforms, land forces augment border control efforts, and maritime assets from the Coast Guard and Navy engage in law enforcement operations. Not surprisingly, the one area where the U.S. and Mexican military do cooperate is the “war on drugs” because of the multiple benefits that it affords to both governments.

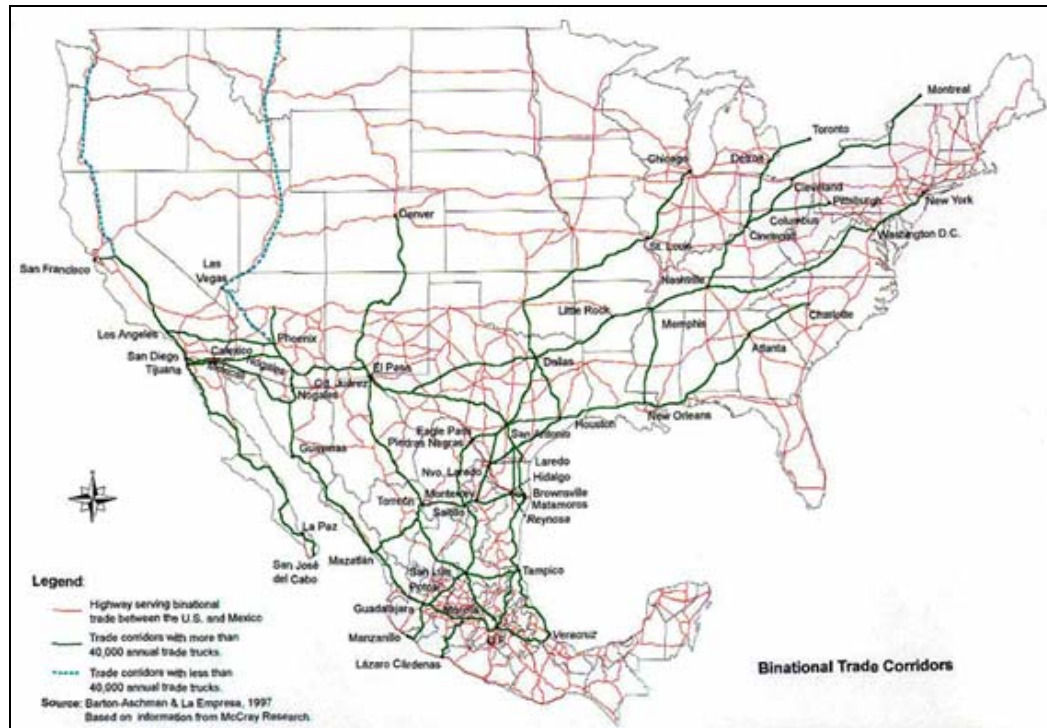
## **B. BINATIONAL DISASTERS**

Seamless cooperation along border areas is imperative because they are potential flash points for binational disasters. The massive amount of economic and industrial activity near major border crossings present unique binational emergency management challenges. To put this into perspective, the Department of Transportation recorded 193 million passenger crossings in personal vehicles and 12.6 million loaded trucks entering the U.S. from Mexico in 2003. The binational trade corridors depicted in Figure 1 illustrates the

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<sup>12</sup> U.S. Department of Defense, *Strategy for Homeland Defense and Civil Support*, Washington, D.C., June 2005, 1.

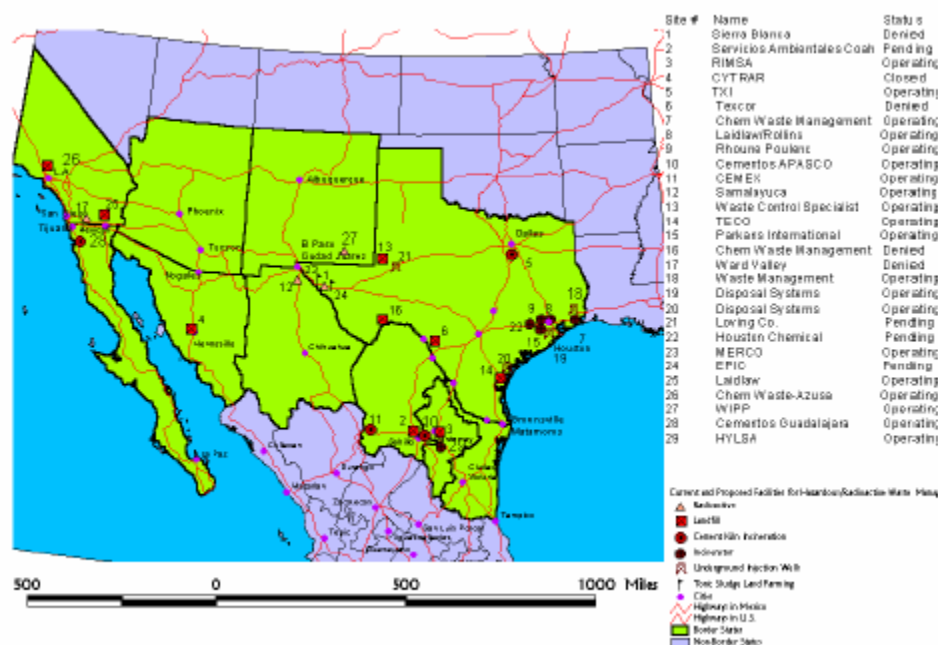
magnitude of this interconnectivity. Moreover, hundreds of industrial production facilities known as "maquiladoras" along border cities such as Tijuana, Ciudad Juárez and Matamoros pose an industrial risk to both Mexican and U.S. communities.



**Figure 1. Binational Trade Corridors<sup>13</sup>**

Adding to this danger are the byproducts of industrialization along the border. Figure 2 depicts the major and proposed commercial hazardous and radioactive waste facilities that can present binational catastrophic problems.

<sup>13</sup> McCray Research, *U.S.-Mexico Joint Working Committee on Transportation Planning*, 1997. Available at <http://www.borderplanning.fhwa.dot.gov/tradecorridors.asp> [Accessed February 2005].



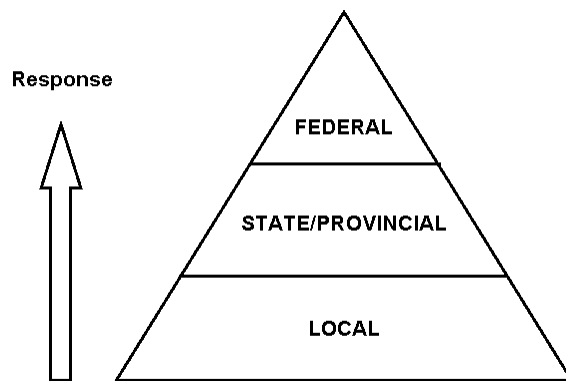
**Figure 2. Major Proposed and Existing Commercial Hazardous and Radioactive Waste Facilities in the Border Region<sup>14</sup>**

Fortunately, local, state, and federal agencies in Mexico and the U.S. are collaborating to address binational disasters. Comprehensive “Sister City” plans exist for all major population centers along the border and most have been exercised. The plans call for police, fire, paramedics, and other workers from both sides of the border to respond quickly to help each other with large fires, dangerous chemical spills, or other emergencies and plans address everything from logistics support and funding to liability and customs questions.<sup>15</sup> After conducting a review of these plans, the noticeable missing element is the role of the Mexican and U.S. military as supporting agencies. This flaw in planning creates a gap in preparing for catastrophic emergencies because when a crisis

<sup>14</sup> México and Texas Center for Policy Studies and Red Mexicana de Acción Frente al Libre Comercio (RMALC) La Neta – Proyecto Emisiones: Espacio Virtual, *Hazardous Waste Management in the United States – Mexico Border States: More Questions than Answers*, 2<sup>nd</sup> ed. Austin, TX/México City, D.F., March 2000, 44. Available at <http://www.texascenter.org/publications/haz2000.pdf> [Accessed August 9, 2005].

<sup>15</sup> U.S. Environmental Protection Agency, *In the News – U.S.-Mexico Border*. Available at [http://www.epa.gov/region06/6xa/border\\_sister\\_cities.htm](http://www.epa.gov/region06/6xa/border_sister_cities.htm) [Accessed August 9, 2005].

exceeds the capability of local, state, and federal civil response efforts, military assets in both Mexico and the U.S. may be required and directed to assist in consequence management operations. Moreover, the National Guard, which is a key participant in every state emergency management structure, is not recognized as an integrated support agency. Given that the National Guard provides unique capability such as identifying chemical, biological, radiological, nuclear, and explosive (CBRNE) agents/substances with Weapons of Mass Destruction Civil Support Teams, their inclusion in planning that may demand specialized capability is imperative. Additionally, all North American countries use a graduated emergency response model similar to the one depicted in Figure 3 to escalate resource requests for emergency responses. For each nation, a predetermined threshold is established typically at the federal level, where military assets may be directed to support civil authorities. In the U.S., the National Guard is centered in the middle of the emergency response triangle and can move vertically up and down rapidly to address emergency management requirements under the authority of a Governor or the President. Naturally, potential binational incidents are more effectively addressed locally so excluding an available cross-border partner is unwise.



**Figure 3. Emergency Response Triangle**

Traditionally, the military has participated in a wide range of missions when directed and supporting civil requests for disaster relief is nothing new.

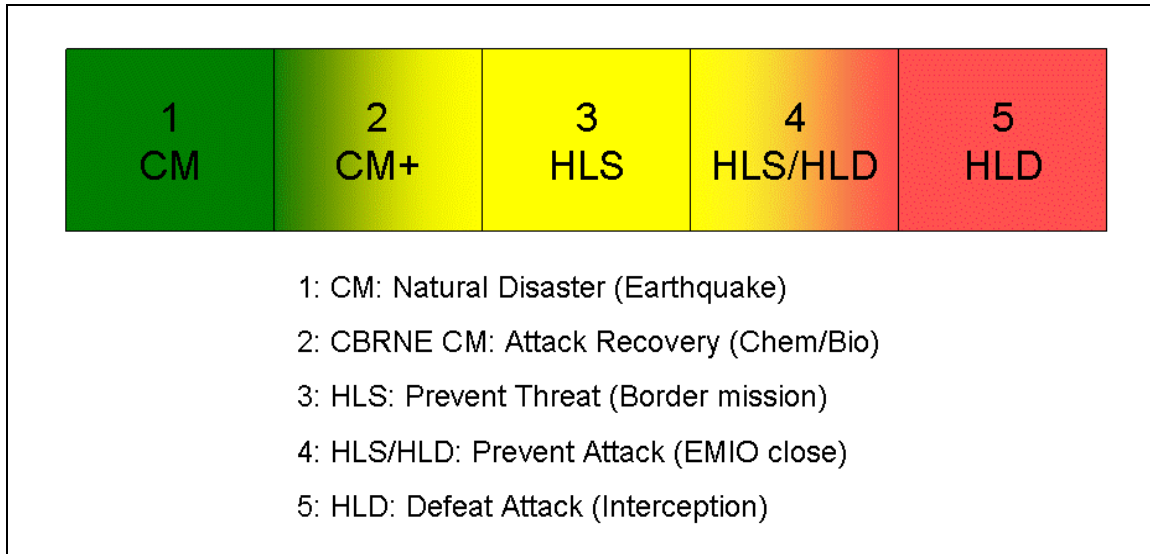
War, as the Clausewitzian saying goes, is the extension of politics by other means. Likewise, military support to civil authority is an extension of politics. For military planners in the U.S., Mexico, and Canada, the spectrum of domestic military operations that have emerged over the last decade can be categorized into five major areas, which are depicted in Figure 4. This spectrum progresses from natural threats on the left to operations that are purely defensive on the right and each of these areas is implied in the mission of USNORTHCOM for U.S. only domestic operations. The first block (1) represents defense support for benign consequence management operations.<sup>16</sup> These operations directly support a lead civil agency. Examples of this type of mission include assisting relief efforts for natural disasters such as earthquakes or hurricanes. The second block (2) represents those consequence management operations that require specialized capability that is unique to the military. For example, a CBRNE consequence management operation that requires large-scale mortuary capability that only the military can support. The third block (3) represents homeland security missions that require military assistance for mission accomplishment. An example of this is military units supporting border patrol activities or drug interdiction. The fourth block (4) represents those homeland security and homeland defense missions, where the DOD may, or may not, be the lead federal agency. An example of this scenario is a maritime interdiction operation using the U.S. Coast Guard in its dual civil-military role. Finally, the last block (5) represents homeland defense missions, where the military is in the lead and is the supported agency. An example of this is a strategic bomber attack or a land invasion.

While these categories may appear as obvious and logical mission sets for cooperation, coordination of many of these activities with our national neighbors occurs informally or not at all. In Mexico, the defense plan for disaster relief, Plan DN-IIIE and the comparable U.S. FUNCPLAN 2501 outline how our respective military forces will assist civil relief efforts domestically, but do not

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<sup>16</sup> Benign used here refers to consequence management operations that do not require the use of force.

synchronize with each other and do not address binational situations. As described, these missions are not offensive in nature; rather their aim is to support national integrity, sovereignty, and security.



**Figure 4. Spectrum of Military Operations**

The gap that exists with consequence management planning in border areas ignores the important role of the military articulated in national plans and operations will suffer if defense capability is required for binational catastrophes. Policies, protocols, and mechanisms need to be established in advance to speed response efforts so lives can be saved and property protected.

### **C. ECONOMIC PROSPERITY**

Military cooperation that enhances U.S.-Mexican security is critical because the economic prosperity enjoyed by both countries must be protected to ensure regional stability. With over \$625 billion in trade between the U.S., Mexico, and Canada in 2003, it is clear that interruptions to this interdependency will have a significant impact on all three economies.<sup>17</sup> Since the passage of NAFTA, the Mexican economy has grown tremendously, which has benefited its democratic institutions and has allowed for positive political change. An example of this change is President Fox's election as the first non-Institutional

<sup>17</sup> U.S. Embassy in Mexico, *2003 Trade*. Available at <http://www.usembassy-mexico.gov/eataglan1.htm> [Accessed November 2004].

Revolutionary Party president in modern Mexican history. In addition to this, Mexican economic prosperity reduces immigration pressure on the United States by providing job opportunities and an improved standard of living in Mexico.

Economic prosperity also implies that more resources will be available for modernizing and training Mexican defense forces. A well-equipped, trained, and financed military will help further Mexican democratic goals by providing a dependable national resource that can assist with internal and external security issues that are of importance to the region. This in turn will reinforce democratic growth and regional stability. For USNORTHCOM a modernized and more capable Mexican military enhances North American security because their forces would be better able to defeat and deter symmetric and asymmetric threats such as terrorists, insurgency, and the illegal drug trade. In addition to providing a more robust internal and external security posture, the Mexican military's ability to assist in civic affairs would be enhanced. Also, a stronger Mexican military eases the costs of the continental defense burden and improves security between both countries.

Lastly, increased economic interdependencies have placed a new and growing emphasis on critical infrastructure that is shared between the two nations. Energy, agriculture, and water in particular, are vital resources that significantly contribute to the health of each nation. In March 2002, the U.S. and Mexico signed the U.S.-Mexico Border Partnership Action Plan, a 22-point plan that examines trans-border infrastructure and communication and transportation networks and their associated vulnerabilities in order to identify critical trans-border infrastructure protection deficiencies, and to take measures to remedy them.<sup>18</sup> While critical infrastructure is clearly a security issue, the potential exists for military involvement as a supporting or supported agency if problems arise that cannot be addressed by private or public safety agencies.

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<sup>18</sup> For more information on the U.S. - Mexico Border Partnership Action Plan see <http://www.whitehouse.gov/infocus/usmxborder/22points.html>.



#### D. STATE OF COOPERATION

U.S.-Mexican military cooperation enhances North American security, which in turn promotes open markets, commerce, and regional stability. Unfortunately, the U.S.-Mexican military planning gap is not an oversight. The relationship between the defense establishments has a long history of strained relations. Aside from historic Mexican bitterness over the outcome of the U.S.-Mexican War and years of internal and externally fueled anti-Americanism, the Mexican military has been shaped over the last 70 years by a one-party political system and its own secretive internal corporate bureaucracy. This has resulted in a tightly controlled organization that is reluctant to participate in continental defense arrangements. In a declassified Department of State cable describing strategies for improving the U.S.-Mexican military relationship a military officer attached to the Mexican Embassy stated that:

We will need to deal with the traditional Mexican policy of non-intervention which make foreign ministry and military establishment alike opposed at this time to any form of joint hemispheric defense force or other multilateral hemispheric military institution; we must recognize that, on these issues, the Mexican military remains an extremely conservative institution which looks skeptically on issues of international cooperation.<sup>19</sup>

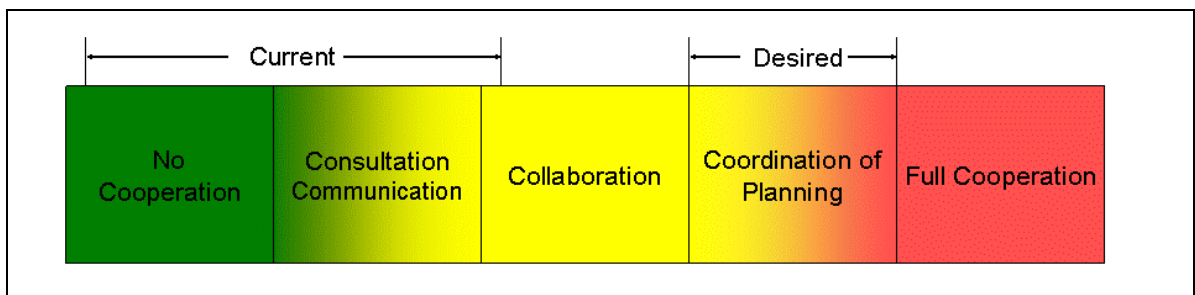
The events of 9/11, however, have shed new light on the most likely and most dangerous threats to our collective security. Today efforts are underway on both sides of the U.S.-Mexican border to reform the national security relationship between the two nations in response to increased terrorism fears.<sup>20</sup> Unfortunately, these efforts have not made substantial progress with respect to military cooperation. The past several years have been characterized by advances in areas such as the growing rapport among top officers and

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<sup>19</sup> U.S. Embassy in Mexico, *The Mexican Army - Still Passive, Isolated, and Above the Fray?* May 11, 1995. Confidential cable. National Security Archive FOIA Request. Declassified June 2003, request no. 24114, 46. Available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB120/doc2.pdf> [Accessed August 9, 2005].

<sup>20</sup> Joe Pappalardo, "U.S.-Mexico Rapport Transformed by Terrorist Threat," *National Defense Magazine*, August 2004. Available at <http://www.nationaldefensemagazine.org/issues/2004/Aug/US-Mexico.htm> [Accessed June 2005].

cooperation in the counterdrug arena.<sup>21</sup> The annual U.S.-Mexican Border Commanders' Conference and other limited high-level exchanges have been productive, but concerns of U.S. meddling in Mexico's internal affairs and continuing suspicions about U.S. intentions complicate expanding a military relationship.<sup>22</sup> Based on several interviews, current literature, and existing open source programs, the level of U.S.-Mexican military cooperation can be categorized somewhere between no cooperation as evidenced by existing binational disaster planning to limited collaboration with respect to the war on drugs. Given that defense and security missions overlap binationally, the ideal level of military cooperation includes the coordination of planning efforts that address common issues that have a defense nexus as reflected in Figure 5.



**Figure 5. Mexican – U.S. Levels of Defense Cooperation**

Despite having a history of frustration, the U.S. and Mexico jointly have an enormous stake in the success of North American security. Transnational security threats that exceed the capacity of civil authorities, such as massive catastrophic disasters or aerospace threats have binational implications requiring coordinated planning efforts for seamless and effective response. Shared security issues like the ones outlined in this chapter can serve as the basis for expanding U.S.-Mexican military cooperation and create the synergy that will benefit both governments. Unfortunately, efforts to enhance the U.S.-Mexican military-to-military relationship have been hindered by the traditional Mexican

<sup>21</sup> Graham Turbiville, "Mexico's Evolving Security Posture," *Military Review*, May-June 2001. Available at [http://fmso.leavenworth.army.mil/documents/mexico\\_evolve/mexico\\_evolve.htm](http://fmso.leavenworth.army.mil/documents/mexico_evolve/mexico_evolve.htm) [Accessed August 9, 2005].

<sup>22</sup> Ibid.

policy of non-intervention and [Mexican] opposition to any form of joint [and combined] hemispheric defense force or other multilateral institution.<sup>23</sup> Additionally, Mexico's insistence on absolute respect for its sovereignty, due to historic U.S. incursions on its territory has sharply limited cooperative efforts on security issues.<sup>24</sup> Fortunately, Mexico's President Fox recognizes the importance of continental security and "a security structure that is multidimensional and modern."<sup>25</sup> The next chapter explores the Canadian-U.S. defense relationship as a guide for developing a military engagement strategy with Mexico in order to strengthen North American security and improve USNORTHCOM's ability to accomplish its objectives.

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<sup>23</sup> U.S. Embassy in Mexico, *The Mexican Army - Still Passive, Isolated, and Above the Fray?* May 11, 1995. Confidential cable. National Security Archive FOIA Request. Declassified June 2003, request no. 24114, 5. Available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB120/doc2.pdf> [Accessed August 9, 2005].

<sup>24</sup> Fryer Wesley, *Mexican Security* (Fulbright-Garcia Robles Grant Proposal, US-Mexico Commission for Educational and Cultural Exchange, 1993). Available at <http://www.wtvi.com/wesley/mexicansecurity.html> [Accessed August 9, 2005].

<sup>25</sup> George Kourous, *Return of the National Security State?* (Background paper from the International Relations Center, Americas Program, 2002). Available at [http://americas.irc-online.org/briefs/2002/0211security\\_body.html](http://americas.irc-online.org/briefs/2002/0211security_body.html) [Accessed January 2004].

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### **III. CONTINENTAL DEFENSE PLANNING**

Strategic planning is most needed where it is least likely to work, and least needed where it is most likely to work.<sup>26</sup>

#### **- Paradox of Strategic Planning**

The absence of strategic military planning, between Mexico and the United States in the 21st century is politically irresponsible and dangerous. Doctrinally, the military is recognized as one of four instruments of national power and its importance cannot be overstated. Policy and planning between Mexico and the U.S., regardless of whether it will ever be exercised, should be accomplished immediately in the interests of mutual security. To facilitate this, the Canadian-U.S. defense relationship is used as point of departure for developing a U.S.-Mexican military planning strategy. Canada's successful defense relationship with the U.S. combined with its independent nature and status as the U.S. northern neighbor make it an ideal nation to analyze for exploring ways to improve the U.S.-Mexican relationship. This chapter explores the military instrument of Canadian and U.S. power to identify and clarify the existing binational strategic planning system<sup>27</sup> that is currently used to understand how policy and planning in the area of defense is created binationally so that a similar approach can be developed with Mexico.

#### **A. CANADIAN - U.S. STRATEGIC DEFENSE PLANNING**

Canada, like Mexico, is a NAFTA trading partner that is concerned about its sovereignty, security, identity, world perception, and ability to affect international events. Yet, as a small nation compared to the U.S., Canada has successfully developed a mature defense relationship while maintaining its character and influence. Canada's proactive engagement with the U.S. across a

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<sup>26</sup> John Bryson, *Strategic Planning for Public and Nonprofit Organizations*, 3rd ed (San Francisco: Jossey-Bass, 2004), 14-15.

<sup>27</sup> Systems approach looks at our organizations as a unified, purposeful combination of interrelated parts, requiring leaders to look at the organization as a whole and understand that defense and security activity in one country affects defense and security of all of North America.

variety of shared issues has contributed to its prosperity and success. Economically, we share the largest bilateral relationship in the world. Undefined, the Canadian-U.S. border is evidence of our common political, economic, social, and cultural values. In 2002, over half a trillion dollars in goods, services, and investment income were exchanged. For 35 states, Canada is the number one foreign trading partner; it absorbs 23 percent of all American exports, and Canada sends 86 percent of all of its exports to the United States. U.S. exports to Canada were three times greater than exports to Japan, larger than the total U.S. exports to the European Union, and larger than U.S. trade with all countries in Latin America.<sup>28</sup> U.S. energy security is dependent on Canada as its largest supplier of foreign energy and because we are joined together on a common electricity grid. Aside from the importance of our economic interdependencies, Canada and United States share land, maritime, and aerospace borders, like Mexico, that must be secured against conventional and asymmetric attack. The September 11th, 2001 attacks made it clear that the Atlantic and Pacific Oceans no longer insulate our nations and that another strike on either country will have significant political and economic repercussions. Fortunately, defense cooperation between Canada and the U.S. has a long and productive history. Formal defense cooperation started during World War II with the establishment of the Canadian-U.S. Permanent Joint Board on Defense (PJBD) in 1940 whose chairs report directly to the Prime Minister and President. Today, the PJBD is still functioning and it is an integral component in the Canadian-U.S. relationship.

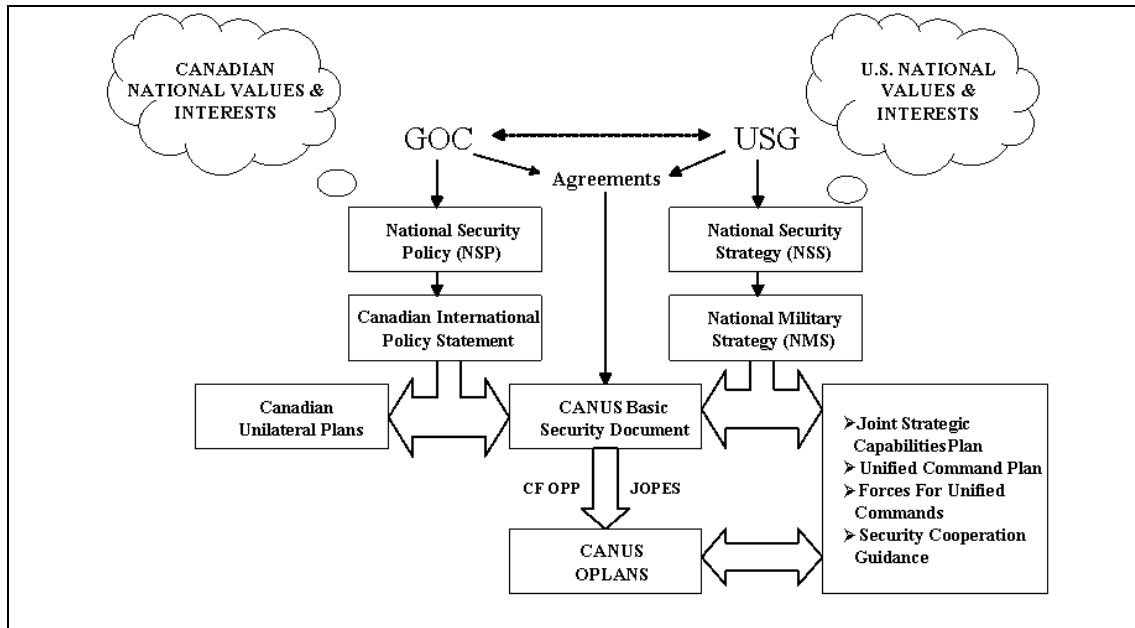
Canadian-U.S. defense planning is derived from several treaties, agreements, and plans. Having an understanding of the relationships between these areas can guide the development of a modern U.S.-Mexican defense planning process. At the core of U.S.-Canadian bilateral and binational military planning are the overarching political goals of each nation. In Canada, this is expressed in the National Security Policy and in the United States it is reflected

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<sup>28</sup> U.S. Department of Commerce, "Top 50 Partners in Total U.S. Trade in 2003," *Office of Trade and Economy Analysis*. Available at <http://www.ita.doc.gov/td/industry/otea/usfth/aggregate/H03T09.html> [Accessed May 2004].

in the National Security Strategy. When comparing the documents it becomes apparent that the interests and values of Canada and United States are very similar. From these documents national military strategy and policy is established. The political policy bridges between the two countries and these unilateral military strategies are the agreements and treaties such as the NORAD Agreement.

At the strategic defense level the key policy bridge is the Basic Security Document (BSD), which in its current draft form is a six-page overarching defense policy document that consolidates the political and military bilateral and binational strategic goals and directs for the cooperative defense of Canada and the United States, military support civil authorities, and NORAD's mission of aerospace defense. The BSD drives the input into both Canadian and U.S. planning systems so that bilateral coordinated activities can occur. This approach to defense planning strengthens binational security while respecting each other's national interests and sovereignty because both nations retain their own unilateral defense plans. Coordinated joint defense and defense supported missions are executed only if directed by the appropriate civil authority. This planning provides the political leadership in both nations security options for binational operations that otherwise would not exist. The Canadian – U.S. strategic planning system, mapped in Figure 6, is a network of connecting processes that work together to accomplish bilateral and binational synchronized planning. The vision and output of this system is the protection of our citizens from harm and preservation of our way of life. Although Canada and the United States share similar interests, values, and goals, we often have different approaches to solving problems yet if our political leadership directed us to cooperate in a defense area our military forces could do so effectively.



**Figure 6. Canadian – U.S. National Defense Planning Process<sup>29</sup>**

## **B. MEXICAN - U.S. STRATEGIC DEFENSE PLANNING**

Currently, the United States and Mexico do not have a collaborative military planning relationship or the strategic bilateral plans to allow for the efficient and seamless execution of combined military operations. For two large neighboring democracies that are interdependent in many respects, the absence of strategic guidance with respect to military operations is incomprehensible. Mexican reluctance to engage the U.S. binationally on defense matters must be overcome and this section will address how this can be accomplished.

Because the success of international policy is a function of diplomacy, politics, and necessity, these areas must be emphasized in devising a strategy that will engage Mexican defense cooperation. Like Canada, Mexico and the U.S. established a cooperative defense commission at the outset of World War II to study problems relating to common defense, planning, and cooperation. This group, known as the Joint U.S.-Mexican Defense Commission, dissolved

<sup>29</sup> US system is modified as a binational system from the Air War College, United States Air Force. *The Joint Staff Officer's Guide 2000* (JFSC Pub 1), 4-8. Available at [http://www.au.af.mil/au/awc/awcgate/pub1/chapter\\_4.pdf](http://www.au.af.mil/au/awc/awcgate/pub1/chapter_4.pdf) [Accessed January 25, 2005].



following the war primarily because of the absence of a strategic threat to Mexico and cooperative strategic military planning between the nations ceased to exist. Today defense coordination and planning between Mexico and the U.S. is negligible and severely limits the options our national leaders have for responding to events of national and binational significance. Fortunately, civil cooperation, planning, and collaboration are quite extensive. The border governors conference, sister city cross-border contingency plans, and other national, regional, and subregional bilateral initiatives enjoy mature and comprehensive relationships. In all of these relationships and plans however, there is no mention of military support despite national planning guidance that clearly states that defense assets and capability will be used if required and directed.

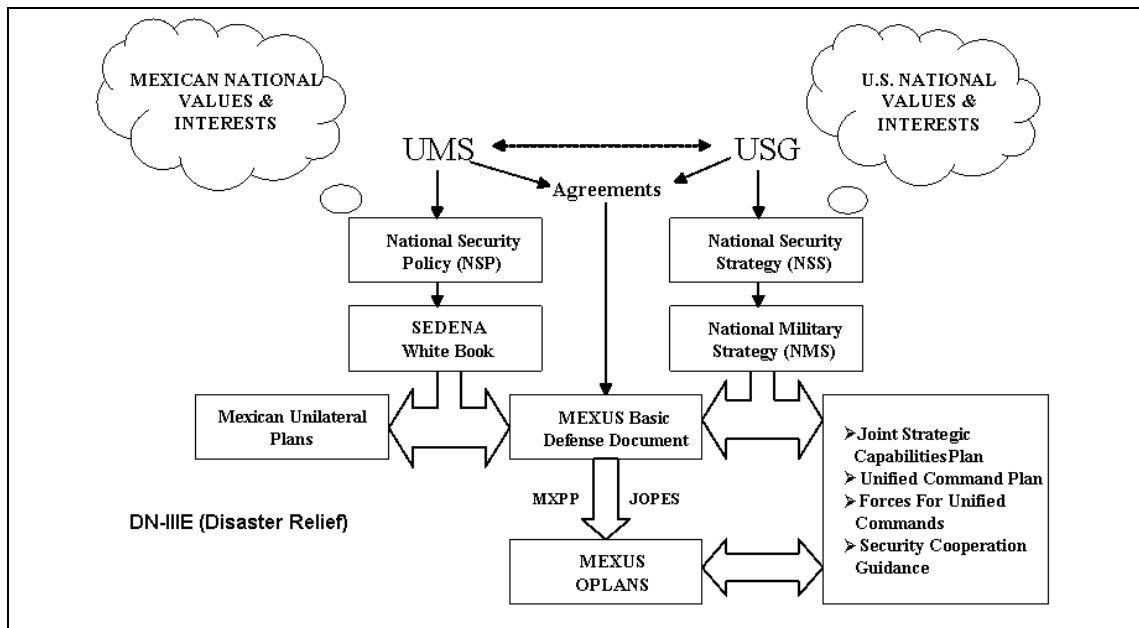
In a recent U.S.-Mexican public health forum, it was noted that border communities are interdependent, thus terrorism preparedness and response between the United States and Mexico border-states must be coordinated, efficient and seamless.<sup>30</sup> Nationally directed bilateral military responses to asymmetric and symmetric threats must also be coordinated, efficient, seamless, and timely to be effective. Individually, the United States and Mexico have pursued national efforts for terrorism preparedness and there is no coordination between national programs.<sup>31</sup> To overcome this strategic defense planning gap, a U.S.-Mexican defense document similar to the Canadian-U.S. Basic Security Document should be developed. This new document ideally would articulate shared Mexican and U.S. national interests and summarize U.S.-Mexican strategic defense policy. Developing this document, as depicted in Figure 7, will promote strategic thinking, acting, and learning for both nations' military and political establishments. Annex I of this thesis contains a draft of the Canadian-U.S. Basic Security Document, which could serve as a guide for the development

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<sup>30</sup> United States - Mexico Border Health Commission, *Terrorism, Public Health Preparedness and Response Planning Forums in the United States-Mexico Border Region*. Available at [http://www.borderhealth.org/public\\_health\\_infrastructure.php?curr=border\\_region](http://www.borderhealth.org/public_health_infrastructure.php?curr=border_region) [Accessed August 9, 2005].

<sup>31</sup> Ibid.

of a U.S.-Mexican only document. A bilateral strategic defense document can also provide the national authorization and justification for the politically reluctant Mexican military to engage in coordinated bilateral planning efforts with the U.S.



**Figure 7. Mexican – U.S. National Planning**

Applying this planning framework will be complicated by the fact that Mexico does not have a publicly documented national security policy or defense strategy and because the term “national security” is not a part of the Mexican national defense lexicon. Historically, the term “national security” has been avoided by Mexico because of its association with Latin American authoritarian regimes. Recently, however, the term has been reintroduced, but its scope has not been defined.<sup>32</sup> Additionally, Mexican law does not define “national security” as an interest.<sup>33</sup>

<sup>32</sup> Craig Deare, “Mexico’s Search for a New Military Identity,” *Joint Force Quarterly*, Autumn 2000, 72. Available at [http://www.dtic.mil/doctrine/jel/jfq\\_pubs/1426.pdf](http://www.dtic.mil/doctrine/jel/jfq_pubs/1426.pdf) [Accessed April 10, 2005].

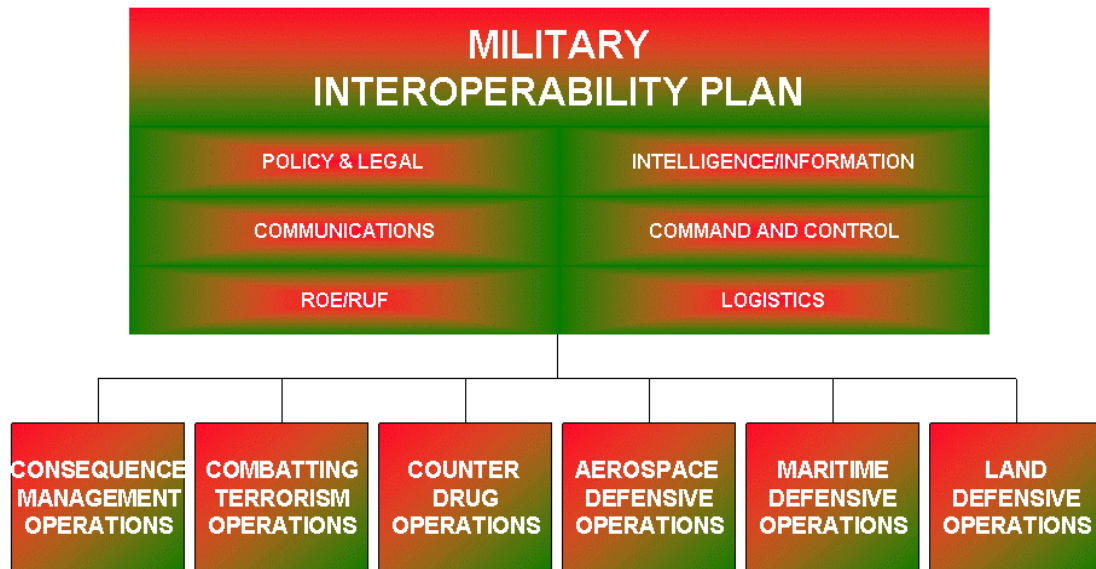
<sup>33</sup> Joe Pappalardo, “U.S.-Mexico Rapport Transformed by Terrorist Threat,” *National Defense Magazine*, August 2004. Available at <http://www.nationaldefensemagazine.org/issues/2004/Aug/US-Mexico.htm> [Accessed June 2005].

Despite this apparent definitional deficit, Mexico has demonstrated its national security policy and defense strategy through its membership in global and regional organizations and by application of its military in internal domestic events. Participation in organizations such as the United Nations, Organization of American States, and the Strategic Security and Prosperity Partnership of North America combined with statements from Mexico's political leadership reflect Mexican national security policy. Furthermore, upon withdrawing Mexico from the Rio Treaty in 2002, President Fox stated the need to create "a security structure that is multidimensional and modern." His declaration reflects Mexican national interest. Clearly, the principal political challenge is for [Western Hemisphere] countries to identify the communication links between their concepts of defense, national security, and hemispheric security, in order to render cooperation possible.<sup>34</sup>

In addition to creating a strategic bilateral military document that allows for enhanced military cooperation, U.S.-Mexican operational planning considerations will have to be addressed so that efficient interoperability would be possible. These considerations include universally accepted coalition operation planning areas and would be common to all operations. These areas include: (1) Policy and Legal Issues, (2) Communications, (3) Rules of Engagement/Rules of Force, (4) Intelligence and Information Sharing, (5) Command-and-Control Arrangements and (6) Logistics Support. Furthermore, each unique military operational area could develop its own binational plan that could be annexed into a single binational interoperability plan. For example, military support to consequence management operations would be a separate and distinct plan from the counter drug operations plan. Both plans would, however, fall underneath the binational military interoperability plan as depicted in Figure 8. Ideally, the Canadian-U.S. plan and the U.S.-Mexican plan would be so similar that a continental interoperability plan could be easily developed at a future time.

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<sup>34</sup> Raúl Benítez-Manaut, "Mexico and the New Challenges of Hemispheric Security," (Washington, DC: Woodrow Wilson International Center for Scholars, Latin American Program, 2004), 27. Available at <http://www.wilsoncenter.org/topics/pubs/ACF18DF.pdf> [Accessed May 21, 2005].



**Figure 8. Bilateral or Trilateral Military Planning Architecture**

This military interoperability plan focuses on joint and combined theater strategic operations and the required processes and procedures for seamless interaction. This plan does not commit forces or obligate participation of either nation to operations that it does not consider in its national interest. Furthermore, the plan is designed as a guidance document for U.S.-Mexican coalition military operations and is adaptive to the political needs of both nations. For both Mexico and the U.S., the reassurance of knowing that their respective militaries could operate together if required would improve each nation's security confidence and serve to deter acts of aggression.

While these steps would vastly improve the U.S.-Mexican security posture, the regional nature of binational emergencies demands that more should be done to make the military resources and capabilities resident in border states accessible to civil authorities. The next chapter explores the issues surrounding the use of National Guard for binational consequence management operations and examines the Pacific Northwest arrangements between United States and Canada as a case study.

## IV. CONTINENTAL MUTUAL AID

Our partnership is committed to the highest results to advance the security and well-being of our people. The partnership is trilateral in concept; while allowing any two countries to move forward on an issue, it will create a path for the third to join later.<sup>35</sup>

Joint Statement by President Vicente Fox Quesada, President George W. Bush, and Prime Minister Paul Martin March 23, 2005

As the World Trade Center's South Tower collapsed in smoke and flames in New York City on September 11, 2001, Americans around the country wondered in horror why the United States was being attacked. Before the dust settled that morning, thousands of New Yorkers rushed home from work to don their military uniforms as citizen soldiers. The same day, New York Governor Pataki announced New York National Guard troops were mobilizing and preparing for deployment.<sup>36</sup> By the afternoon, a federally certified Civil Support Team and 2,490 National Guard troops were activated. Within 24 hours of the attack on the World Trade Center, 8,500 New York Army and Air National Guard members were supporting New York City providing security and augmenting recovery efforts.<sup>37</sup> In October 2001, within 72 hours of President Bush's request, approximately 8,000 additional Guard members were assisting civil authorities in protecting 444 airports around the country.<sup>38</sup>

The speed of mobilization and deployment displayed in New York by the National Guard demonstrates the tremendous capability of the citizen soldier in responding to local and regional catastrophic emergencies. Interstate compacts

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<sup>35</sup> Security and Prosperity Partnership of North America, *Report to Leaders*, June 2005, 4. Available at <http://www.embamexcan.com/ECONOMY/SPP-report%5B1%5D.pdf> [Accessed June 30, 2005].

<sup>36</sup> New York State Department of Labor, *WTC Response Update: Governor Announces Overnight Response*. Available at: <http://www.labor.state.ny.us/agency/pressrel/aa091201.htm> [Accessed November 2004].

<sup>37</sup> U.S. Senate Committee on Appropriations, *Defense Subcommittee Hearing on the FY05 National Guard & Reserve Budget: Testimony of LTG Steven Blum, ARNG, Chief, National Guard Bureau*, 2004. Available at <http://appropriations.senate.gov/hearmarkups/record.cfm?id=220257> [Accessed November 12, 2004].

<sup>38</sup> Ibid.

that include Mexican and Canadian provinces further enhance this response ability by encouraging comprehensive and coordinated civil emergency preparedness, response, and recovery measures.

Despite congressionally legislated agreements, a State's response to a border incident using National Guard resources is limited to our domestic boundaries under current U.S. law. Our inability to respond seamlessly to binational emergencies with our foreign neighbors is likely to result in the needless loss of life and property. Given this constraint, this chapter examines continental emergency management cooperation, identifies issues surrounding the use of National Guard forces in cross-border civil support operations, and provides recommendations for consideration to overcome statutory barriers that are counterproductive to regional, state, and national interests. This chapter also argues that a bilateral civil-military emergency management partnership is a potent force for saving lives and preserving property and can serve as the foundation for expanding military cooperation with Mexico and Canada. If partnerships are coordinated with our national neighbors, we can create a more robust transnational emergency management process. Doing so will increase our collective security, improve our response time, and save more lives in future cross-border incidents.

Today our security environment has changed dramatically and the institutions, which defend our continent against common threats, must adapt to remain viable otherwise the safety, security, and economic prosperity of North America will be in jeopardy. The World Trade Center attack demonstrated that asymmetric threats can approach the U.S. from any direction and that the National Guard can provide civil authorities immediate support and capability. This attack also reinforced that natural and technological disasters have binational consequences and continental impact. Given this, a noticeable missing element in the defense relationship with Canada and Mexico is the absence of a formal policy for bilateral military cooperation in support of civil authorities. Also missing is a Mexican defense coordinating presence at NORAD and USNORTHCOM. After all, southern aerospace, maritime, and land

approaches to the U.S. are just as important as the northern approaches with respect to an attack or supporting consequence management operations. The absence of border area military interaction and cooperation limits the response ability, options, and capabilities that can be leveraged against binational disasters and events of continental significance.

A bilateral transnational emergency management framework that incorporates a civil-military partnership can serve as the cornerstone upon which North American defense can be strengthened. To achieve this, the Canadian-U.S. Pacific Northwest emergency management cross-border agreements and the role of the National Guard are examined as model for establishing a regionally based emergency management structure.

#### **A. CANADIAN – U.S. EMERGENCY MANAGEMENT COOPERATION**

Homeland defense and homeland security are top priorities for the Governments of Canada and the United States.<sup>39</sup> Canadian Prime Minister Martin stated that Canada has a desire to deepen “cooperation on mutual assistance in the event of major natural or human-caused emergencies” with the U.S.<sup>40</sup> Similarly, according to the White House, one of the best strategies to build capability in communities outside major metropolitan areas is to develop mutual aid agreements to share resources.<sup>41</sup> While this observation is aimed at U.S. communities, this concept is valid for the larger global community as well. Canada and the U.S. understood this logic in 1986 when they formalized their history of emergency cooperation with the signing of *The Agreement Between the Government of Canada and the Government of the United States on Co-Operation in Comprehensive Civil Emergency Planning and Management*.<sup>42</sup>

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<sup>39</sup> Prime Minister of Canada, *Securing an Open Society: Canada’s National Security Policy* (NSP). Available at [http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat\\_e.pdf](http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf) [Accessed August 9, 2005].

<sup>40</sup> Governor General of Canada, *Speech from the Throne*, Oct 2004, 13. Available at [http://pm.gc.ca/grfx/docs/sft\\_e.pdf](http://pm.gc.ca/grfx/docs/sft_e.pdf) [Accessed October 2004].

<sup>41</sup> The White House Website, *Policies and Initiatives*. Available at <http://www.whitehouse.gov/infocus/mutualaidagreements> [Accessed October 2004].

<sup>42</sup> Transport Canada, *Cooperation and Emergency Preparedness*. Available at [http://www.tc.gc.ca/vigilance/sep/emergency\\_preparedness/canada\\_us.htm](http://www.tc.gc.ca/vigilance/sep/emergency_preparedness/canada_us.htm) [Accessed October 2004].

This agreement recognizes that emergencies can transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these events. Canada and United States declare in the preamble of this agreement the importance of comprehensive civil emergency planning and management. Both countries recognize this idea relates to peacetime emergencies stemming from accidents, natural disasters and deliberate acts, and to situations of declared or undeclared hostilities, including armed enemy attack.<sup>43</sup>

Building on this bilateral agreement, Congress passed a joint resolution in 1998 giving consent to the *Pacific Northwest Emergency Management Arrangement* (PNEMA).<sup>44</sup> This resolution legalized a regional emergency management compact between the States of Alaska, Idaho, Oregon, and Washington, and the Canadian Province of British Columbia, and the Yukon Territory. The fact that Congress passed this Act is significant because it acknowledges and authorizes a regional relationship with a foreign country. The aim of the PNEMA Act is to improve regional emergency preparedness, response, and cooperation.

...the Signatories recognize the importance of comprehensive and coordinated civil emergency preparedness, response and recovery measures for natural and technological emergencies or disasters, and for declared or undeclared hostilities including enemy attack.<sup>45</sup>

The intent of the PNEMA Act is to save lives and protect property by coordinating regional planning and response efforts. The premise is, where regional cross-border cooperation exists, respective national interests are served. Response efforts under this Act include resources that are under the jurisdiction of a state governor. Because the PNEMA Act is not intended to

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<sup>43</sup> Public Safety and Emergency Preparedness Canada, *Agreement Between the Government of Canada and the Government of the United States on Co-Operation in Comprehensive Civil Emergency Planning and Management*. Available at [http://www.ociepc-bpiepc.gc.ca/whoweare/em\\_high\\_canada\\_us\\_e.asp](http://www.ociepc-bpiepc.gc.ca/whoweare/em_high_canada_us_e.asp) [Accessed December 2004].

<sup>44</sup> Federal Logic, *The Pacific Northwest Emergency Management Arrangement*. Available at [http://www.fedlogic.com/Documents/PacificNorthwest\\_EMA.pdf](http://www.fedlogic.com/Documents/PacificNorthwest_EMA.pdf) [Accessed November 2004].

<sup>45</sup> Ibid.



influence foreign policy or infringe on national sovereignty, the ability of a state governor to assist its regional foreign neighbors is a win-win policy. As all emergencies are inherently local problems, a regional response will typically be timelier than federal action. In emergencies, resolution effectiveness is based on timely response with appropriate resources. Therefore, a regionally activated response will typically be more effective in addressing a disaster. Depending on how the U.S. Constitution and the U.S. Federal Code of Laws are interpreted however, using the National Guard as a state emergency management resource for a binational emergency is open to debate. This debate must be resolved in favor of granting state governors the maximum flexibility and the authority to commit the necessary resources at their disposal to mitigate a binational crisis. The next section argues in favor of overcoming these hurdles. The restrictions present in U.S. laws that prevent the use of the National Guard in a non-federalized status for cross-border regional emergencies need to be reconsidered.

## **B. ROLE OF THE NATIONAL GUARD**

The National Guard has a unique dual mission that consists of both a federal and state role.<sup>46</sup> Because of this dual mission, Guard personnel hold membership in the National Guard of their state and in the National Guard of the United States and this section elaborates on this distinction through the examination of U.S. Federal Code to argue in favor of regional cooperation. Understanding the intent of the U.S. Constitution, U.S. Code of Laws, and Congress is essential in determining how the National Guard can be used to support a State activated binational emergency response effort.

### **1. Federal Role**

According to Federal Code, the purpose of the National Guard is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever,

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<sup>46</sup> About.com, *The Army National Guard: About Us*. Available at [http://usmilitary.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.arng.army.mil%2FAbout\\_Us%2F](http://usmilitary.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.arng.army.mil%2FAbout_Us%2F) [Accessed October 2004].

during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.<sup>47</sup> Congress or the President may activate National Guard units without a governor's consent as prescribed by the public law. A comparison of duty status for National Guard personnel is summarized in Table 1. The following sections of Title 10 U.S.C. describe the federal role of the National Guard and are presented to emphasize national responsibilities and considerations that must be taken into account when committing forces regionally under state control.

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<sup>47</sup> United States Code, *Purpose of the Reserve Components* (10 U.S.C. § 10102). Available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse\\_usc&docid=Cite:+10USC10102](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+10USC10102) [Accessed November 2004].

	State Active Duty	Title 32	Title 10
Command & control	State Governor	State Governor	Federal President
Who performs duty	Federally organized National Guard	Organized National Guard in service of U.S. <sup>11</sup>	AC6, RC and National Guard of U.S. <sup>11</sup>
Where duty performed	IAW state law	CONUS <sup>112</sup> [Worldwide <sup>13</sup> ]	Worldwide
Pay	IAW state law	Federal pay & allowances	Federal pay & allowances
Federal reimbursement	IAW Stafford Act <sup>9</sup> or Cooperative Agreement <sup>10</sup>	N/A personnel costs paid by Federal funds	N/A personnel costs paid by Federal funds
Tort immunity	IAW state law	FTCA <sup>4</sup>	FTCA
PCA application <sup>1</sup>	No	No	Yes
USERRA <sup>2</sup>	No, IAW state law	Yes	Yes
SSCRA <sup>3</sup>	No, IAW state law	No	Yes
Mission types	IAW state law	IDT, AT, state AGR & other Federally authorized	ODT, ADT, AGR & as assigned, subj. to PCA
Discipline	State military code	State military code	UCMJ <sup>5</sup>
Federal retirement points	No	Yes	Yes
Other benefits	IAW state law	Federal	Federal
Medical	IAW state law	Federal	Federal
Disability	IAW state law	Federal	Federal
Involuntary order to duty	IAW state law	Yes <sup>7</sup>	Yes <sup>8</sup>
Voluntary order to duty	IAW state law	Yes	

**Table 1. Comparison of duty status for National Guard personnel under state active duty, Title 32 and Title 10<sup>48</sup>**

Notes:

- 1 Posse Comitatus Act (18 U.S.C. § 1385)
- 2 Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §§ 4301-4333)
- 3 Soldiers and Sailors Civil Relief Act (50 U.S.C. App. §§ 500-548, 560-591)
- 4 Federal Tort Claims Act (28 U.S.C. §§ 2671-2680)
- 5 Uniform Code of Military Justice (10 U.S.C. §§ 800-946)
- 6 Active component
- 7 32 U.S.C. §502(f) (1)

<sup>48</sup> National Governors Association, *Comparison of duty status for National Guard personnel under state active duty, Title 32 and Title 10*. Available at [http://www.nga.org/nga/legislativeUpdate/1,1169,C\\_ISSUE\\_BRIEF%5ED\\_2670,00.html](http://www.nga.org/nga/legislativeUpdate/1,1169,C_ISSUE_BRIEF%5ED_2670,00.html) [Accessed November 2004].

- 8 Under Presidential Reserve Call-up (10 U.S.C. § 12304); partial  
mobilization (10 U.S.C. § 12302); or full mobilization (10 U.S.C. §  
12301(a))  
9 Stafford Act (42 U.S.C. § 5121) for disaster-related activities  
10 Cooperative agreements if to perform an authorized National Guard  
function  
11 10 U.S.C. §§ 3062(c) and 8062(c)  
12 [Title 32 duty for operations is restricted to CONUS]  
13 [Title 32 funding may be used for Title 10 training overseas]

Title 10 U.S.C. Section 12301(a) provides that in time of war or national emergency declared by the Congress the entire membership of all reserve components or any lesser number can be called to active duty for the duration of the war or national emergency plus six months. Although this statute normally is viewed as the call-up authority for responding to a major threat to national security, the DOD has stated that it could be used to activate reservists for a domestic emergency.<sup>49</sup>

Title 10 U.S.C. Section 12302 provides that, in time of national emergency declared by the President, up to 1 million members of the Ready Reserve can be called to active duty for not more than 24 consecutive months.<sup>50</sup> Similar to the previous authority, DOD has stated that this statute could also provide access to reservists for a domestic emergency, although it has never been used for this purpose.

Title 10 U.S.C. Section 12304 provides that, when the President determines it is necessary to augment the active forces for any operational mission, up to 200,000 members of the Selected Reserve can be called to active duty for not more than 270 days.<sup>51</sup> This section is known as Presidential Selected Reserve Call-Up (PSRC) authority. This provision also states that no unit or member may be ordered to active duty under this authority to provide

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<sup>49</sup> United States Code, *Reserve Components Generally* (10 U.S.C. § 12301(a)). Available at <http://www.lii.warwick.ac.uk/uscode/10/12301.html> [Accessed November 2004].

<sup>50</sup> United States Code, *Ready Reserve* (10 U.S.C. § 12302). Available at <http://www.lii.warwick.ac.uk/uscode/10/12302.html> [Accessed November 2004].

<sup>51</sup> United States Code, *Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency* (10 U.S.C. § 12304). Available at <http://www.lii.warwick.ac.uk/uscode/10/12304.html> [Accessed November 2004].

assistance to either the federal government or a state in time of a serious natural or manmade disaster, accident, or catastrophe.<sup>52</sup> Thus, this statute cannot be used to mobilize the National Guard reservists for domestic emergencies.

Title 10 U.S.C. Section 12301(b) provides that at any time, a service Secretary can order any reservist to active duty for up to 15 days each year.<sup>53</sup> This authority traditionally has been viewed as the authority allowing the services to enforce the reservists' 2-week annual training requirement. However, DOD Office of General Counsel provided an interpretation in 1994 stating that this authority could be used for operational missions as well as annual active duty for training. The published legal opinion noted that this authority could not be used if a unit or member had already completed 15 days of annual training for the calendar year. DOD further noted that this authority has never been used to call reservists involuntarily to active duty for a domestic emergency.

In addition to the involuntary activation of reservists under the above conditions, Title 10 U.S.C. Section 12301(d) provides for call-up of reservists who volunteer for active duty. The number of volunteer reservists called to active duty and the length of time they may be kept on active duty generally depends upon the availability of funds and the end-strength authorization level specified for active military.

Clearly, the National Guard has a federal commitment, but by design is reserved for use only when required during national emergencies and times of war. Regional emergencies that do not require federal intervention or a federal disaster declaration fall outside of the intent of these statutes and is not addressed. The National Guard in a state role however can assist with local and regional problems.

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<sup>52</sup> United States Code, *Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency* (10 U.S.C. § 12304). Available at <http://www.lii.warwick.ac.uk/uscode/10/12304.html> [Accessed November 2004].

<sup>53</sup> United States Code, *Reserve Components Generally* (10 U.S.C. § 12301(b)). Available at <http://www.lii.warwick.ac.uk/uscode/10/12301.html> [Accessed November 2004].

## **2. State Role**

When National Guard units are not mobilized under federal control, they report to the governor of their respective state or territory. Each State National Guard is governed by unique State law, but in all cases is organized under the supervision of an Adjutant General. Under state law and subordinated to the command and control of a State's governor, the National Guard protects life, and property, and preserves peace, order, and public safety. These missions are accomplished through emergency relief support during natural disasters such as floods, earthquakes and forest fires; search and rescue operations; support to civil defense authorities; maintenance of vital public services and counterdrug operations.

The governor of each state can order the State's Army and Air National Guard units to state active duty to help respond to domestic emergencies and disasters. In this capacity, Guard forces are an integral component of a States emergency management structure. If additional assistance is required to alleviate a state emergency, a governor can ask for assistance from neighboring states using the Emergency Management Assistance Compact or request federal support through the Federal Emergency Management Agency (FEMA).<sup>54</sup> With a presidential declaration of disaster, FEMA's federal assistance may include additional federal (Title 10) military support from DOD. For the four states that are signatories to the PNEMA Act, assistance to participating Canadian provinces and territories is possible. This participation however is based on Title 32 interpretation and is discussed next.

Title 32 U.S.C. Section 502(f) provides that guardsmen can be ordered to perform additional training and other duty under regulations prescribed by the Secretary of the Army or Secretary of the Air Force.<sup>55</sup> This section is the authority for allowing Title 32 National Guard forces to operate nationally under

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<sup>54</sup> For example, see Revised Code of Washington 38.10.010. *Emergency Management Assistance Compact*. Available at <http://www.leg.wa.gov/RCW/index.cfm?section=38.10.010&fuseaction=section> [Accessed November 2004].

<sup>55</sup> United States Code. *Required drills and field exercises* (32 U.S.C. § 502 (f)). Available at <http://liimirror.warwick.ac.uk/uscode/32/502.html> [Accessed November 2004].

state command and control (see Table 1). Recognizing the importance of the National Guard in Homeland Defense activities, Congress included in the passage of the 2005 National Defense Authorization Act a new chapter within Title 32 of the Federal Code. This legislation allows state governors to retain command and control of their National Guard forces while performing federally funded operational missions in support of homeland defense activities. Because this legislation can be interpreted to include binational operations, the relevant sections of Title 32 are highlighted as background for the analysis that follows.

Title 32 U.S.C. Section 902 states that the Secretary of Defense may provide funds to a governor to employ National Guard units or members to conduct homeland defense activities that the Secretary, determines to be necessary and appropriate for participation by the National Guard units or members, as the case may be.<sup>56</sup> Title 32 U.S.C. Section 904, provides that members of the National Guard performing full-time National Guard duty in the Active Guard and Reserve Program may support or execute homeland defense activities performed by the National Guard under this chapter [32 USCS §§ 901 et seq.].<sup>57</sup> This duty is limited to 180 days and the governor of the state may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.<sup>58</sup> Title 32 U.S.C. Section 906 provides that a governor of a state may request funding assistance for the homeland defense activities of the National Guard of that State from the Secretary of Defense. Any such request shall include the following: (1) The specific intended homeland defense activities of the National Guard of that State, (2) An explanation of why participation of National Guard units or members, as

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<sup>56</sup> United States Code, *Homeland defense activities: funds* (32 U.S.C. § 902). Available at [http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?\\_m=d33d3459ecea3705e56dffed9e97c0c5&\\_docnum=5&wchp=dGLbVzb-zSkVA&\\_md5=8cd247db8d87e15b9d51542112a519c8](http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=d33d3459ecea3705e56dffed9e97c0c5&_docnum=5&wchp=dGLbVzb-zSkVA&_md5=8cd247db8d87e15b9d51542112a519c8) [Accessed November 2004].

<sup>57</sup> United States Code, *Homeland defense duty* (32 U.S.C. § 904). Available at [http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?\\_m=d33d3459ecea3705e56dffed9e97c0c5&\\_docnum=7&wchp=dGLbVzb-zSkVA&\\_md5=346219055e5dd3257b4cb9073339aa97](http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=d33d3459ecea3705e56dffed9e97c0c5&_docnum=7&wchp=dGLbVzb-zSkVA&_md5=346219055e5dd3257b4cb9073339aa97) [Accessed November 2004].

<sup>58</sup> Ibid.

the case may be, in the homeland defense activities is necessary and appropriate, and (3) A certification that homeland defense activities are to be conducted at a time when the personnel involved are not in Federal service.<sup>59</sup> Title 32 U.S.C. Section 907 provides that nothing in this chapter [32 U.S.C.S. §§ 901 et seq.] shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform functions authorized to be performed by the National Guard by the laws of the State concerned.<sup>60</sup>

### **C. CONSTITUTIONAL INTENT**

The National Guard under the command of a state governor (Title 32) is not authorized to participate in foreign military operations due to the constitutional relationship that exists between the national and individual state governments. The power to make treaties and conduct foreign policy is an exclusive authority granted to the Federal government by Article 1, Section 10, Clause 3 of the U.S. Constitution, which states:

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.<sup>61</sup>

Further, Presidential authority for command and control over the Armed Forces of the United States is made clear in Article 2, Section 2 of the U.S. Constitution, which provides that:

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<sup>59</sup> United States Code, *Requests for funding assistance* (32 U.S.C. § 906). Available at [http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?\\_m=d33d3459ecea3705e56dffed9e97c0c5&\\_docnum=9&wchp=dGLbVzb-zSkVA&\\_md5=bdd1eddb287a50078accda6c12c95b7c](http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=d33d3459ecea3705e56dffed9e97c0c5&_docnum=9&wchp=dGLbVzb-zSkVA&_md5=bdd1eddb287a50078accda6c12c95b7c) [Accessed November 2004].

<sup>60</sup> United States Code, *Relationship to State duty* (32 U.S.C. § 907). Available at [http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?\\_m=d33d3459ecea3705e56dffed9e97c0c5&\\_docnum=10&wchp=dGLbVzb-zSkVA&\\_md5=5da7137c22f01710361db51f60897c00](http://80-web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=d33d3459ecea3705e56dffed9e97c0c5&_docnum=10&wchp=dGLbVzb-zSkVA&_md5=5da7137c22f01710361db51f60897c00) [Accessed November 2004].

<sup>61</sup> *The Constitution of the United States* (Article 1, § 10 (3)). Available at <http://www.house.gov/Constitution/Constitution.html> [Accessed November 9, 2005].



The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.<sup>62</sup>

Based on these Constitutional mandates, military operations conducted in a foreign country, to include Mexico and Canada, is a national affair and therefore a national responsibility. Consequently, the precedent and policy is that individual states are restricted from using Title 32 National Guard forces for military operations binationally and internationally. The authority of the federal government is reinforced by the Constitution's Supremacy Clause, which states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.<sup>63</sup>

Under the Supremacy Clause, everyone must follow federal law in the face of conflicting state law. It has long been established that "a state statute is void to the extent that it actually conflicts with a valid federal statute" and that a conflict will be found either where compliance with both federal and state law is impossible or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.<sup>64</sup> Given this background, it is established that only Title 10 National Guard forces under the command and control of the President are authorized to participate in foreign military operations.

A modernist interpretation could argue that Title 32 National Guard forces participating in cross-border disaster relief operations do not interfere with national authority and is permissible. Several states, such as Maine and Rhode

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<sup>62</sup> *The Constitution of the United States* (Article 2, § 2 (1)). Available at <http://www.house.gov/Constitution/Constitution.html> [Accessed August 9, 2005].

<sup>63</sup> *The Constitution of the United States* (Article 6, (2)). Available at <http://www.house.gov/Constitution/Constitution.html> [Accessed August 9, 2005].

<sup>64</sup> Letric Law Library Lexicon, *Supremacy Clause*. Available at <http://www.lectlaw.com/def2/s105.htm> [Accessed November 2004].

Island would agree. Many communities in states that border Canada have plans to respond to their “foreign” neighbors if required.

Several reasons exist that support not using the National Guard for binational disaster operations. First, national policy and Federal Law may be interpreted so that Title 32 National Guard forces cannot participate in binational cross-border emergency relief operations because:

- The federal government has exclusive authority for international military operations and foreign policy.
- Title 32 National Guard forces are not under the command of the President.
- Federal Law (10 U.S.C. § 12310 (C) 3) explicitly states that select reserve duties can only be performed in the United States its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.<sup>65</sup>

Second, the Status of Forces Agreement (SOFA) that affords legal protection to Title 10 forces operating abroad will not apply to Title 32 National Guard forces in Canada. Legal protection for National Guard personnel participating binationally must be clarified so that tort issues will not be problematic. Currently, the language of binational emergency management compacts does not address this issue adequately. Lastly, a governor only has jurisdiction and authority within the boundaries of his or her state.

Despite these statutory barriers, several reasons exist to support using Title 32 National Guard resources for regional cross-border disaster assistance operations. First, there has been much discussion about expanding the National Guard role to perform operational missions under 32 U.S.C. 502(f), which provides that guardsmen can be ordered to perform additional training and other duty under regulations prescribed by the Secretary of the Army or Secretary of the Air Force.<sup>66</sup> This “other duty” provision has been used as authority for the

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<sup>65</sup> United States Code, *Reserves: for organizing, administering, etc., reserve components* (10 U.S.C. § 12310 (C) 3). Available at [http://assembler.law.cornell.edu/uscode/html/uscode10/usc\\_sec\\_10\\_00012310----000-.html](http://assembler.law.cornell.edu/uscode/html/uscode10/usc_sec_10_00012310----000-.html) [Accessed November 2004].

<sup>66</sup> United States Code, *Required drills and field exercises* (32 U.S.C. § 502 (f)). Available at <http://liimirror.warwick.ac.uk/uscode/32/502.html> [Accessed November 2004].

National Guard to perform national operational missions under the originating State's command and control, including Weapons of Mass Destruction - Civil Support Teams (WMD-CSTs). WMD-CSTs are however intentionally restricted to domestic operations by Title 10 U.S.C. Section 12310.

A Reserve may perform duties described in paragraph (1) [Duties relating to defense against weapons of mass destruction (i.e. WMD-CSTs)] only while assigned to a reserve component rapid assessment element team and performing those duties within the geographical limits of the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.<sup>67</sup>

Even if WMD-CSTs are federalized, they are still restricted to domestic operations putting their capability out of reach of Canada and Mexico. National Guard forces other than WMD-CSTs do not have this restriction.

Second, to maintain readiness for federal duty, the National Guard performs training in Title 32 status. Title 32 does not specify where training must take place resulting in training conducted throughout the U.S. and at times internationally. If units deploy outside the U.S. they must however be in Title 10 status even though it is Title 32 funded.

Soldiers deploying outside of Continental U.S. (CONUS) must be placed under the command of the gaining OCONUS (Outside CONUS) command in accordance with Title 10, United States Code (10 USC). Army National Guard soldiers must have a statement on their orders changing their status from Title 32, United States Code (32 USC) to Title 10. The gaining OCONUS command assumes Uniform Code of Military Justice authority over all RC [Reserve Component] soldiers upon their arrival in theater.<sup>68</sup>

For example, units from all states regularly train at the Joint Readiness Training Center in Louisiana. Further, units exercise with foreign militaries such as the Rhode Island Army National Guard conducting annual training in

<sup>67</sup> United States Code, *Reserves: for organizing, administering, etc., reserve components* (10 U.S.C. § 12310 (C) 3). Available at [http://assembler.law.cornell.edu/uscode/html/uscode10/usc\\_sec\\_10\\_00012310----000-.html](http://assembler.law.cornell.edu/uscode/html/uscode10/usc_sec_10_00012310----000-.html) [Accessed November 2004].

<sup>68</sup> U.S. Army, *Command and Control, Army Regulation 350–9, Overseas Deployment Training*, Chap. 4, 2. Available at [http://www.army.mil/usapa/epubs/pdf/r350\\_9.pdf](http://www.army.mil/usapa/epubs/pdf/r350_9.pdf) [Accessed August 9, 2005].

Gagetown, New Brunswick, Canada.<sup>69</sup> This accepted practice of by the chain of command (i.e. the President and DOD) provides a precedent for deploying Title 32 National Guard forces in support of foreign regional requests for disaster assistance.

Third, the relationships that exist locally and regionally along the border between Mexico, Canada, and the United States are strong and support mutual aid. Additionally, in the case of Canada, regional National Guard and Canadian Forces have established training relationships. For example, Northern tier state National Guard forces have trained in Canada and Canadian Forces have participated in training in the U.S. Moreover, units have participated in various regional missions such as OPERATION SECURE BORDERS (15 Jan - 30 Jun 2002) in Title 10 status with their Canadian counterparts. Further, regional mutual aid at the request of a Canadian province is not making foreign policy or an infringing on national sovereignty.

Fourth, on October 28, 2004 the 2005 National Defense Authorization Act was signed into law allowing federal funding of National Guard domestic operations. Prior to this legislation, all Title 32 missions were conducted for training purposes only. Now, this law makes it possible for Guard members to perform, in Title 32 status, homeland defense activities in support of the Secretary of Defense and the states.<sup>70</sup> State governors now may retain command and control of their National Guard forces while performing operational federal missions. By empowering the State with federal authority, Title 32 cross-border regional operations are possible depending upon the extent to which this authority is interpreted. Further, under Title 32 U.S.C. Sections 904 and 906 the National Guard can potentially support the congressionally ratified PNEMA Act in neighboring Canadian provinces and territories in response to “declared or undeclared hostilities including enemy attack.”<sup>71</sup>

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<sup>69</sup> Brian O’Connors, USNORTHCOM National Guard Bureau Liaison Office, email message to author, December 13, 2004.

<sup>70</sup> Bob Haskell, “Homeland Funding,” *National Guard Bureau Website*. Available at <http://www.ngb.army.mil/news/story.asp?id=1331> [Accessed November 2004].

<sup>71</sup> Ibid.

Fifth, by empowering the states with Title 32 operational funding, the general welfare and safety of citizens is enhanced because the agility of decentralized authority will speed decision to action time for responding to a crisis because the National Guard is permanently prepositioned in the communities near border areas. Army Lieutenant General Steven Blum, Chief of the National Guard Bureau recently noted that, "you can't drive 25 miles in any direction in a populated area without running into a National Guard armory."<sup>72</sup>

Sixth, this distribution of capabilities is an economy of force approach to addressing the threat of multiple simultaneous events. Taxpayers' benefit because it is cost effective to have a well trained part-time distributed force that is able to respond immediately and effectively to a crisis versus a full-time centralized force that will have a longer reaction time. After all, the first 12 - 72 hours after a disaster are the most critical.<sup>73</sup> When an event occurs that overwhelms local and state civil resources the speed and capability of the National Guard under the command and control of a state governor is unmatched.

Lastly, the Bush Administration recognizes and supports mutual aid as an established mechanism for sharing or pooling limited resources to augment existing capabilities and supplementing jurisdictions that have exhausted existing resources due to disaster.<sup>74</sup> Congress also recognizes and supports regional mutual aid through *The Agreement Between the Government of Canada and the Government of the United States on Co-Operation in Comprehensive Civil Emergency Planning and Management* and the *Pacific Northwest Emergency Management Arrangement Act*. This Agreement and Act provide that:

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<sup>72</sup> Donna Miles, "Guard's Homeland Defense Mission Continues, 368 Years Later." *American Forces Information Service*. Available at [http://www.dod.gov/news/Dec2004/n12132004\\_2004121302.html](http://www.dod.gov/news/Dec2004/n12132004_2004121302.html) [Accessed December 2004].

<sup>73</sup> Federal Emergency Management Agency, *Community Emergency Response Team*. Available at [http://training.fema.gov/EMIWeb/CERT/c\\_wv.htm](http://training.fema.gov/EMIWeb/CERT/c_wv.htm) [Accessed November 2004].

<sup>74</sup> The White House Website, *Policies and Initiatives*. Available at <http://www.whitehouse.gov/infocus/mutualaidagreements> [Accessed October 2004].

Authorities of either country may request the assistance of the other country in seeking appropriate alleviation if the normal application of law in either country might lead to delay or difficulty in the rapid execution of necessary civil emergency measures.<sup>75</sup>

Similarly, the *Agreement on Cooperation in Cases of Natural Disasters* signed in 1980 with Mexico addresses disaster assistance. For these reasons, Title 32 National Guard forces should be authorized to assist their regional foreign neighbors in disaster relief operations if requested by their governments and it is in the interest of the United States.

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<sup>75</sup> Public Safety and Emergency Preparedness Canada, *Agreement Between the Government of Canada and the Government of the United States on Co-Operation in Comprehensive Civil Emergency Planning and Management*. Available at [http://www.ociepc-bpiepc.gc.ca/whoweare/em\\_high\\_canada\\_us\\_e.asp](http://www.ociepc-bpiepc.gc.ca/whoweare/em_high_canada_us_e.asp) [Accessed December 2004].

## V. CONCLUSION

To make North America secure for the future, we need integrated, coordinated and seamless measures in place at, within, and beyond our borders to provide our people and our infrastructure with the highest possible common level of protection from terrorists and other criminal elements, as well as from the common threats of nature.<sup>76</sup>

Joint Statement by President Vicente Fox Quesada, President George W. Bush, and Prime Minister Paul Martin March 23, 2005

The U.S.-Mexican binational security architecture is fundamentally inadequate if it does not include military cooperation and planning. Because military assistance to civil authorities for consequence management operations is supported in Mexico and the U.S., a bilateral transnational emergency management framework that incorporates a civil-military partnership can serve as the cornerstone upon which U.S.-Mexican defense relationships can be built.

Responding to a foreign regional emergency management request is not a threat to sovereignty or the national authority of the Federal government. Therefore, states that border Canada and Mexico should be authorized by law with authority to use Title 32 National Guard forces for binational regional emergency civil support operations provided that:

- Congress has approved an existing emergency management compact or other arrangement for the involved participants.
- It is in the interests of the United States.
- The request is coordinated with the Department of State and DHS.
- Other non-military means are incapable of achieving required objectives.
- Use of military resources is selective and limited.

The decision to order Title 32 National Guard forces to support binational disaster operations focuses on the unique capabilities and resources the military

<sup>76</sup> Security and Prosperity Partnership of North America, *Report to Leaders*, June 2005. Available at <http://www.embamexcan.com/ECONOMY/SPP-report%5B1%5D.pdf> [Accessed June 30, 2005].

can bring to bear, rather than on its combat power. Generally, the military is not the best tool for civil concerns, but under certain conditions use of military forces may be appropriate. These conditions exist when:

- The scale of a catastrophe dwarfs the ability of civilian agencies to respond.
- When the need for relief is urgent and only the military has the ability to provide an immediate response.
- When the military is needed to establish the preconditions necessary for effective application of other instruments of national power.
- When a binational crisis could affect ongoing combat operations.
- When a response requires unique military resources.
- Military forces should only be used if they are likely to accomplish their objectives.

All Title 32 National Guard cross-border efforts should be limited in duration, have a clearly defined mission and end state, entail minimal risk to lives, and be designed to support the host nation and work within their emergency management structure.

With the approval of the Department of State, DOD, and their Mexican counterparts a U.S.-Mexican planning group composed of civil and military members should be formed to create a binational military support agreement that specifies the roles, responsibilities, and restrictions for military support to civil authorities in binational emergency management situations.

Once the civil-military partnerships are established and functioning regionally, a more encompassing national effort can be made to establish a U.S.-Mexican binational strategic planning process. The first step in this process is to develop a political policy document that reflects binational values and military strategy. The second step is to develop a binational interoperability plan that captures the considerations that are applicable to all binational operations.

The environments in which public and nonprofit organizations operate have become not only increasingly uncertain in recent years but also more tightly interconnected; thus changes anywhere in the system reverberate unpredictably



– and often chaotically and dangerously – throughout society.<sup>77</sup> This is particularly true in the domestic and continental security environment where symmetric and asymmetric threats have the potential to utilize weapons of mass destruction. Faced with such lethal outcomes, strategic binational defense planning is critical not only for the survival and long-term prosperity of the United States, but for the entire continent.

Binational emergencies are inevitable and the civil-military emergency management partnership is a potent force for saving lives and preserving property that can be made more powerful if used in concert with our national neighbors. Eventually, a situation will arise that will require a collaborative civil-military emergency management response with Mexico. If military capability is requested and appropriate, states participating in binational planning efforts with their regional Mexican neighbors should have the authority to order Title 32 National Guard forces to assist. Politically, the Bush Administration, the U.S. Congress, and Mexican President Fox have demonstrated their support for increased security cooperation and regional mutual aid. As neighboring democracies that share common values, action is needed today to develop binational U.S.-Mexican civil-military cooperation for consequence management operations.

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<sup>77</sup> John Bryson, *Strategic Planning for Public and Nonprofit Organizations*, 3rd ed. (San Francisco: Jossey-Bass, 2004), 1.

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## **APPENDIX**

### **DRAFT CANADA - UNITED STATES BASIC DEFENSE DOCUMENT**

#### **1. PURPOSE.**

The purpose of the Basic Defense Document (BDD) is to provide strategic guidance to senior military leaders for the defence of Canada and the United States. The BDD identifies the military defense objectives derived from political goals, outlined in government policy documents including, but not limited to, the 1940 Ogdensburg Declaration, the Canadian National Security Policy, and the United States National Security Strategy. In addition, it establishes the overarching framework for Canada-United States (CANUS) Region<sup>78</sup> military cooperation and provides strategic direction for bi-national military planning.

#### **2. GEOSTRATEGIC ENVIRONMENT.**

The geostrategic environment for North America has evolved significantly over the last century. Proliferation of weapons of mass destruction (WMD) and the rise of global terrorism have added new dimensions to the traditional view of continental defense. Today we must be prepared to address, with suitable capabilities, the aerospace, land, maritime and information operations, and other threats that could endanger Canada and the U.S. These threats may include state and non-state actors that sympathize with terrorist activities or permit the transit of illegal material (such as drugs, weapons, explosives, etc...) or persons bound for the CANUS Region. A full description of the threat to North America can be found in the current version of the CANUS North American Security Assessment.

#### **3. NATIONAL SECURITY VISIONS.**

Canadian Prime Minister Paul Martin and U.S. President George W. Bush reaffirmed a common security vision in statements made during President Bush's visit to Canada on November 30, 2004.

- "President Bush and I are well aware that the prosperity of our nations, our status as open societies, and the well-being of our democratic institutions are linked now to the integrity of our collective security."  
- Prime Minister Paul Martin

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<sup>78</sup> The CANUS Region is defined as a) CANADA; b) continental UNITED STATES, including Alaska; and c) Puerto Rico and the United States Virgin Islands, and includes air space above the Territorial Seas.

- “The relationship between Canada and the United States is indispensable to peace and prosperity on the North American continent.”  
- President George W. Bush
- “...we will continue to explore new and innovative ways to enhance relations with the United States to defend the continent.”  
- Canada’s International Policy Statement 19 April 2005

Likewise, the National Security Strategy (NSS) of the United States of America identifies that:

“...there is little of lasting consequence that the United States can accomplish in the world without the sustained cooperation of its allies and friends in Canada and Europe.”<sup>79</sup>

Canada and the United States must be able to act wherever our interests are threatened. To achieve this partnership we must:

- Enhance information and intelligence sharing between our two nations by moving from a “need to know” paradigm to a “need to share” premise that is essential to the security and defence of Canada and the U.S.
  - Ensure we remove all obstacles to sharing defense-to-defence and military-to-military information and intelligence; establish flexible and credible protocols, processes, and supporting capabilities to expand the sharing of information and intelligence with non-defense and non-federal agencies and organizations at the state, province, and local levels across both nations.
  - Develop net centric capabilities between our two nations to support CANUS Command structures and nation-to-nation information sharing at all levels for the mutual defense of North America.
- Ensure that the military forces of our nations have appropriate resources to contribute to the mutual defense of North America;
- Develop planning processes to enable those contributions to become effective multinational fighting forces;
- Take advantage of the technological opportunities and economies of scale in our defense spending to transform our military forces so that they defeat potential aggressors and diminish our vulnerabilities;

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<sup>79</sup> The White House, *National Security Strategy (NSS) of the United States of America*, 25. Available at <http://www.whitehouse.gov/nsc/nss.html> [Accessed August 9, 2005].

- Streamline and increase the flexibility of CANUS command structures to meet new operational demands and the associated requirements of training, integrating, and experimenting with new force configurations; and
- Maintain the ability to work and fight together as allies even as we take the necessary steps to transform and modernize our forces.<sup>80</sup>

The Canadian Chief of the Defence Staff (CDS) stated that the “U.S. is Canada’s most important ally and defence partner [and] it is in Canada’s national interest to work collaboratively with the U.S. to strengthen continental security.”<sup>81</sup> Similarly, the Chairman of the Joint Chiefs of Staff (CJCS) has identified that a primary objective of U.S. security cooperation is to work closely with our friends and allies to deter aggression or coercion.<sup>82</sup> The overall objective of defending our nations against common enemies is the same. In addition, these documents recognize that working together; we can create synergies, with a view toward enhanced information sharing, defense, and security of Canada and the United States, so that our societies and citizens continue to prosper in a safe and free environment.

#### **4. IMPLEMENTATION MECHANISMS.**

Operations may range from defending the CANUS Region against full-scale attack to providing assistance to civil authorities. Canadian and U.S. military forces must be prepared to defend against any type of attack. National military forces are essential for maintaining sovereignty and are fundamental to the right to act unilaterally; however, there are circumstances pertaining to the CANUS Region wherein Canada and the U.S. will choose to act together. In view of the foregoing political guidance, the following bi-national strategic military objectives are addressed by this BDD and its supporting documents:

- Secure Canada and the United States against all types of attack to ensure territorial integrity and the survival of both nations;
- Strengthen our alliance and partnership to address common challenges in bi-national defense; and

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<sup>80</sup>The White House, *National Security Strategy (NSS) of the United States of America*, 25. Available at <http://www.whitehouse.gov/nsc/nss.html> [Accessed August 9, 2005].

<sup>81</sup> Chief of the Defence Staff, *A Time for Transformation: Annual Report 2002-2003*, 26. Available at [http://www.cds.forces.gc.ca/pubs/anrpt2003/intro\\_e.asp](http://www.cds.forces.gc.ca/pubs/anrpt2003/intro_e.asp) [Accessed August 9, 2005].

<sup>82</sup> Office of Force Transformation, Office of the Secretary of Defense, *Military Transformation: A Strategic Approach*, Fall 2003, 6. Available at [http://www.ofc.osd.mil/library/library\\_files/document\\_297\\_MT\\_StrategyDoc1.pdf](http://www.ofc.osd.mil/library/library_files/document_297_MT_StrategyDoc1.pdf) [Accessed April 15, 2005].

- Assist each other, as required, in providing assistance to civil authorities for continent-wide emergency management.

Close coordination between Commander, NORAD (CDRNORAD), Commander U.S. Northern Command (CDRUSNORTHCOM), and the Commander, Canada Command is essential to achieve these military objectives. Therefore, three mechanisms are essential to enhance bi-national military cooperation:

- a. NORAD CONPLAN "Aerospace Warning and Aerospace Control of North America".
- b. CANUS Combined Defense Plan.
- c. CANUS Civil Assistance Plan.

NORAD CONPLAN "AEROSPACE WARNING AND AEROSPACE CONTROL OF NORTH AMERICA". The purpose of this plan is to provide the basis of day-to-day aerospace defense, aerospace surveillance, air sovereignty operations, and counter drug operations in North America. CDRNORAD is responsible for deliberate planning for the aerospace warning and aerospace control of North America as defined by the NORAD Agreement.

COMBINED DEFENSE PLAN (CDP). The purpose of the CDP is to provide the framework for the execution of the combined and joint military operations to maintain the defense and the security of the CANUS Region during peace, contingencies, and war. In recognition of a significant overlap between national defense and national security, the CDP will address the synchronization of bi-national military efforts into a coherent bi-national plan. Chief of the Defence Staff (CDS) and the Chairman Joint Chiefs of Staff (CJCS) are the approval authorities; Commander, Canada Command and Commander, USNORTHCOM are the designated planning agents, responsible for the production of the CDP. The CDP will at a minimum address bi-national:

- a. Maritime domain awareness;
- b. Shared situational awareness between defense and security agencies;
- c. Defensive Information operations (IO);
- d. Coordination with NORAD for aerospace defense;
- e. Joint and combined defense against symmetric and asymmetric threats;  
and
- f. Defense Support to Civil Authorities.

CIVIL ASSISTANCE PLAN (CAP). The purpose of this plan is to provide the framework for the military of one nation to provide support to the military of the other nation, which is providing support to civil authorities under the provision of the Canadian National Defence Act or the U.S. National Response Plan. Commander, Canada Command and Commander, USNORTHCOM are the designated planning agents for the development of the CAP. The CAP will at a minimum address:

- a. Request and approval process for bi-national military support to civil authorities;
- b. Procedures for a rapid military-to-military cooperation in response to requests for defense support to civil authorities;
- c. Bi-national military information sharing; and
- d. The requirement for bi-national planning, training, and exercises.

## **5. LEGAL CONSIDERATIONS.**

All operations pursuant to this BDD and supporting plans will comply with international and domestic law.

### **a. International.**

(1) International law recognizes the inherent right of a sovereign state, either alone or in conjunction with allies, to use military force in national self-defense.

(2) Procedures for crossing the CANUS border will comply with existing national laws and bi-national agreements. Deployments of U.S. forces to CANADA or vice versa must be agreed to by each nation.

(3) The armed forces of Canada and the U.S. have differing legal obligations with regard to armed conflict. Each nation's military will adhere to its obligations under the international treaties to which it is a signatory.

### **b. Domestic.**

(1) United States - Federal and state statutes circumscribe the ability of U.S. armed forces to assist civilian law enforcement and other agencies. The authority for use of force is also very narrowly defined in statutes, regulations, and court decisions.

(2) Canada - Canadian Forces may support Canadian federal or provincial law enforcement agencies, if requested in accordance with mechanisms set by Canadian law.

## **6. REVIEW AND REVISION CONSIDERATIONS.**

Acknowledgment is made that this BDD will be reviewed upon Canada Command's commencement of operations in April 2006 and implementation of a new NORAD Agreement in May 2006. Further reviews of the BDD shall not be constrained or required in a specific period of time. The BDD may remain in effect indefinitely, until superseded by agreement of the two nations. Either nation can request a review of the BDD at any time that shall be honored.

## **7. CONCLUSION.**

This document provides the strategic framework for enhanced military cooperation between Canada and the United States. The supporting documents will enable both militaries to provide the detail necessary to fulfill the security visions of Canada and the United States.

The Basic Security Document, MCC 100-35, dated August 20, 1999, is superseded upon receipt of this document. Contingent upon the consent of the Military Cooperation Committee (MCC), the BDD will cease using a MCC numbering system. Dates will identify the current signed and approved version of the BDD.

RICK HILLIER  
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Chief of Defence Staff

RICHARD B. MYERS  
General, USAF  
Chairman, Joint Chiefs of Staff



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